JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-02-04-003 / NOT PRECEDENTIAL**
ID: **MV000003**
DATE: **02-04-03**
DISPOSITION: **DENIED**
TAX TYPE: **MV / IRP**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW on this 30th day of December, 2002, the above styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to AN Administrative Law Judge. Following withdrawal of counsel for Protestant, notice of status due was sent to Protestant at his last known address. No response was filed by Protestant. Thereafter, notice was served upon the parties that this cause would be closed and the matter submitted for decision upon the filing of a verified response to the protest by the Motor Vehicle Division (hereinafter "Division"). Protestant did not file a response to this notice. Accordingly, this matter was submitted for an examination into the merits of the protest pursuant to 68 O.S. Section 221(D).

Upon review of the file and records in this matter, including the protest filed by Protestant and the verified response to the protest filed by the Division, the undersigned makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In accordance with the provisions of the International Registration Plan ("IRP") and 47 O.S. 2001, Section 1120, the Registrant's fleet was licensed and registered on a proportional basis by the State of Oklahoma during the 2000 license year.

2. The Division notified Protestant by letter dated June 1, 2000, of its intent to audit the Protestant's operational records for license year 2000 and advised Protestant that the records required for review would include individual vehicle mileage records, monthly recaps, driver daily logs, trip reports, fuel purchase invoices, driver's pay records and freight bills.

3. The Division attempted to secure Protestant's operational records for purposes of performing an IRP audit for the 2000 license year by a thirty (30) day letter dated July 20, 2000.

4. Protestant failed to produce the requested records.

5. As a result of the failure to produce any operating records, the Division by letter dated October 4, 2000, issued an assessment of additional fees for the 2000 license year in the amount of $8,207.37 against Protestant, representing full registration fees, 100% for the State of Oklahoma. The assessment is the difference between the actual fees paid and full Oklahoma fees.

6. By letter dated October 24, 2000, Protestant filed a timely protest, stating that the lady hired to get the requested paperwork together had destroyed it; that he should not be responsible for the $8,207.37; and that he sent quarterly tax reports and the Division should have copies of them.

7. Upon review of the audit, the full Oklahoma fee was adjusted to an amount due of $2,803.73.

8. In an attempt to estimate a tax amount for license year 2000, the Division requested that Protestant produce records maintained for prior license years.

9. Protestant provided records for license years 1996, 1997, 1998 and 1999, which were forwarded to the Division for review.

10. The Division reviewed the documents provided and advised Protestant that it would need additional information in order to make a determination for the 2000 license year.

11. The Protestant failed to respond to this request.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this action. 68 O.S. 1991, Section 207 and 47 O.S. 1991, Section 1120.

2. Protestant is subject to audit by Oklahoma as his base jurisdiction. Article XVI, Section 1600 of the IRP.

3. An assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, *Oklahoma Administrative Code 710:1-5-47*; see, *Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission*, 768 P.2d 359 (Okl. 1988).

4. A proper request for Protestant's operational records was made by the Division. International Registration Plan, Uniform Operation Audit Procedure Guidelines, Article VI, Section A. Protestant's failure to comply with the request may result in the assessment of up to 100 percent registration fees for the base state. *Id*., at Article VII, Section A.

5. The protest should be denied.

DISPOSITION

It is the DETERMINATION of the undersigned, based upon the specific facts and circumstances of this case, that the protest be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.